

UNITED STATES OF AMERICA
UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

MYRON JACKSON,

Petitioner,

Case No. 2:12-cv-190

v.

Honorable R. Allan Edgar

JEFFREY WOODS,

Respondent.

MEMORANDUM AND ORDER

On August 2, 2013, U.S. Magistrate Judge Greeley entered a Report and Recommendation (“R&R”) recommending that Respondent’s motion for summary judgment be granted and Petitioner’s habeas petition be dismissed as untimely. Doc. No. 35. Petitioner has filed objections to the R&R. Doc. No. 38. Petitioner has also filed a motion to hold this case in abeyance to allow him to present additional unexhausted claims in state court. Doc. No. 36. This Court is required to make a de novo determination of those portions of the R&R to which objections have been filed, and may accept, reject, or modify any or all of the Magistrate Judge’s findings or recommendations. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b).

In his objections, Petitioner asserts that he is entitled to equitable tolling. The Court agrees with Magistrate Judge Greeley’s analysis that Petitioner has not demonstrated his entitlement to equitable tolling in this case. Petitioner also asserts that he has asserted a claim of actual innocence, thereby allowing his petition to proceed. Petitioner’s only

argument in support of this assertion is that the “cumulative effect of the constitutional errors alleged in the habeas petition establishes plain error and makes out a prima facie case to actual innocence.” Such a conclusory assertion lacks merit. Plaintiff has failed to establish a credible claim of actual innocence.

Petitioner’s objections to the R&R [Doc. No. 38] are without merit and are DENIED. Petitioner’s motion to hold this case in abeyance while he returns to state court to exhaust additional claims [Doc. No. 36] is DENIED. Magistrate Judge Greeley’s R&R [Doc. No. 35] is APPROVED and ADOPTED as the opinion of the Court pursuant to 28 U.S.C. § 636(b)(1) and W.D. Mich. L. Civ. R. 72.3(b). The petition for writ of habeas corpus brought pursuant to 28 U.S.C. § 2254 is DENIED and DISMISSED WITH PREJUDICE.

If Petitioner files a notice of appeal, it will be treated as an application for a certificate of appealability which shall be DENIED pursuant to 28 U.S.C. § 2253(c)(2); Fed. R. App. P. 22(b)(1); and *Slack*, 529 U.S. at 484. Reasonable jurists could not find that this decision to dismiss Petitioner’s claims is debatable or wrong.

A Judgment consistent with this Memorandum and Order will be entered.

SO ORDERED.

Dated: 9/19/2013

/s/ R. Allan Edgar
R. Allan Edgar
United States District Judge